

26

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CONT.CAS(C) 108/2010

***Date of Judgment 09 July, 2010***

YUVRAJ GABA

..... Petitioner

Through: Mr.Nishant Dutta, Advocate.

versus

K S MEHRA COMMISSIONER MCD & ORS

..... Respondent

Through: Mr.Sanjeev Sabharwal, Adv. for MCD.  
Mr.Alok Kumar, Mr.Dalip Rustagi and  
Ms.Manisha, Adv for respondent no.2

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

1. Whether reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

**G.S.SISTANI, J (ORAL):**

1. Petitioner has averred willful disobedience of the order dated 29.12.2009 passed by the Lieutenant Governor. The facts as set out in the petition are that in the month of June, 2008, respondent no.2, who is the occupant of the ground floor of the property bearing No.8/34, Ramesh Nagar, New Delhi (hereinafter referred as, 'the premises'), had undertaken some unauthorized construction on the ground floor. During the course of the said construction, respondent no.2 demolished four load bearing walls, because of which cracks started appearing on the first and second floor of the premises. The petitioner made a complaint both to the MCD as well as to the Delhi Police and on account of intervention of the Police, respondent no.2 admitted that cracks had appeared on the first and the second floor of the premises and also promised to carry out necessary repairs. The MCD also inspected the ground floor of the premises and also found that on account of unauthorized construction, cracks have appeared on the first floor and the

second floor and had issued various directions to respondent no.2.

2. Aggrieved by the action taken by the MCD, respondent no.2 filed two appeals against the issuance of show cause notice by the MCD before the Appellate Tribunal, which was dismissed by order dated 18.03.2009, which led to filing of an appeal before the Lieutenant Governor.
3. The grievance of the petitioner is that during the pendency of the appeal before the Lieutenant Governor, the Lieutenant Governor appointed a Court Commissioner and also passed orders from time to time which have been flouted by the respondents. Counsel for petitioner has drawn attention of the court to the order dated 06.05.2009 passed by the Lieutenant Governor, relevant portion of which reads as under:

“I find from the report of the Court Commissioner that the action of the ground floor occupant has adversely affected the structural safety of the entire building. It has been stated in the report that the ground floor occupant has changed the load bearing walls, and the occupant should have taken the prior permission of the MCD, especially as the removal of the load bearing walls constituted a hazards to the safety of the upper floor/ adjoining property/ occupants of the building itself. Secondly, it has been suggested by the Court Commissioner that the ground floor occupant should immediately take the advice of a structural consultant, having minimum 10-15 years professional experience for strengthening the structure, which has been weakened by the unilateral action of the ground floor owner/ occupant. The structural consultant shall give proper calculations of the load requirement and design calculations for the remedial measures to be adopted by the ground floor owner. The entire cost of engaging the services of the structural consultant as well as the remedial measures to be taken for the ground floor and the upper floors, should be borne by the ground floor occupant.

.....”

4. In the order of 06.05.2009 itself Lieutenant Governor also

ordered that services of structural engineer be also utilized. Counsel for petitioner also submits that a categorical finding was given by the Court Commissioner that on account of action of the ground floor occupant (respondent no.2 herein) structural safety of the entire building has adversely been affected. The structural engineering, who was appointed has also given his report. Counsel for petitioner has also drawn attention of the court to order dated 29.12.2009, where the conclusion drawn by the Court Commissioner has been extracted, which reads as under:

"3. Conclusion:

It can, therefore, be concluded that the action of ground floor occupant has adversely affected the structural safety of the entire building. All the above facts do necessitate the need of a proper system of adoption of detailed structural design especially for rehabilitation of structures though may be of 2-3 storeys only. The general practice of taking the advice of an architect or a mason for structural changes in the existing buildings can endanger human life and safety. Hon'ble L.G. may like to amend the MCD building bye laws to this effect for the general safety of the citizens of Delhi."

5. Counsel for petitioner has also placed strong reliance on the status report filed by the Deputy Commissioner (West Zone) MCD, operative portion of which reads as under:

"After going through..... The only viable solution in sight therefore, is to reconstruct the 9" thick walls at the Ground floor level with proper foundations at the original location as recommended by Sh.P.C. Ragtah on page 2/12 in his report. Sh.A.K. Sarin, former Engineer, member, DDA who was appointed Court Commissioner in the present case, has also opined the same in his report submitted before this Hon'ble Court. However, it is beyond doubt that in case the entire building is demolished and re-constructed afresh, better structure stability can be ensured."

6. Counsel for respondent no.2 submits that although he does not dispute that cracks have resulted on account of renovation carried out by respondent no.2, but remedial action had already been taken by respondent no.2, which finds mention in the report of Sh.V.P. Agarwal of Esa Consultants Pvt. Ltd., who was appointed by him.
7. Counsel for petitioner submits that report of Sh.V.P. Agarwal of Esa Consultants Pvt. Ltd., cannot be relied upon, as it was obtained by respondent no.2 and Sh.V.P. Agarwal, is not an independent authority.
8. At this stage, counsel for MCD submits that MCD will take appropriate action based on its own status report which has been filed at page 101 of the paper book.
9. Counsel for the petitioner submits that the concern of the petitioner is *primarily* the life and safety of his family members and other persons residing on the first floor and the second floor of the premises. He submits that with the monsoon around the corner, if urgent steps are not taken by the MCD, there is every likelihood of serious mishap. The MCD in its status report (at page 101 of the paper book) has suggested reconstruction of thick wall on the ground floor level with proper foundation at the original location as recommended by Sh.P.C. Ragtah in his report and Sh.A. K. Sarin, former Engineering Member, DDA, who was appointed Court Commissioner in the present case, had opined the same in his report submitted, may be directed to be complied with.
10. Taking into consideration the facts of this case and the stand taken by the MCD that it will take action based on its status report, present contempt petition is disposed of with the directions to the MCD to ensure strict compliance of its status report dated 10.11.2009 with regard to erection of a thick wall within three weeks of receipt of this order. Besides it will also be open for the MCD to take recourse to various provisions of the MCD Act and Rules framed thereunder.

11. In view of above, the contempt petition is disposed of.

12. DASTI to counsel for the parties.

**CM.No.8186/2010**

13. In view of order passed in the petition, application stands disposed of.

**G.S. SISTANI, J.**

**July 09, 2010**  
'ssn'